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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,612	09/08/2000	Lester D. Nelson	FXPL-01027US0 MCF/KJD	3385
23910	7590	08/17/2005	EXAMINER BARNIE, REXFORD N	
FLIESLER MEYER, LLP FOUR EMBARCADERO CENTER SUITE 400 SAN FRANCISCO, CA 94111			ART UNIT 2643	PAPER NUMBER

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/658,612	Applicant(s) NELSON ET AL.	
	Examiner REXFORD N. BARNIE	Art Unit 2643	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached paper.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


REXFORD BARNIE
PRIMARY EXAMINER

Response to arguments

The applicant argued that the combination including Slotte and (Bremer or Yamashita) fails to teach and render the claimed subject matter.

The examiner disagrees with the applicant because the primary art of record (Slotte et al) teaches a telephone system wherein a called party can relay a conversational element to a caller during the beginning of a call, during the call and/or end of the call. According to Slotte, the content of the message could include a plurality of possibilities as desired including the fact that a call would be attended to later. Slotte teaches that conversational messages (elements) can be associated with selectors (devices) (see col. 10) and pre-stored.

Note that since conversational elements are pre-stored, the same elements can be activated during the beginning of a call or, during a call with the ability to revert back to a call with the same effect.

Thus, in combining the references, the examiner intent was to teach the fact that one can put a call in a quite mode and revert back to continue talking using different keys in different stages of communication with the same effect given the possibilities taught by Slotte at any stage of a call. Thus, the combination is believed proper and permissible.

The applicant argued that the combination including Slotte fails to teach a live conversation.

The examiner disagrees because Slotte teaches being able to relay messages during the middle of a call between a calling and called party.

The applicant argued that the combination including Bremer fails to teach keys respectively for activating a quiet mode and activating a call mode (active state).

The examiner disagrees with the applicant's assertion that it's a single key that performs both functions because (col. 3 of Bremer) teaches that a silent answer key can be activated to put a call in a silent mode and then using a control key (not shown on figs., col. 3 line 34) to enter an active state wherein a call can continue.

The examiner supplemented the teaching of Slotte with that of Yamashita to teach that one can have two keys for activating silent mode and entering an active mode (continue communication). See above for explanation as set forth including Bremer.

The applicant argued that the combination including Zahavi fails to teach the claimed limitations.

The applicant has attacked the references individually when the explanation as set forth in the rejection of the claimed subject matter was based on a combination. See the explanation as set forth regarding claim 13.

In summary, the explanation as set forth regarding the claimed subject matter is believed proper and permissible.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **REXFORD N BARNIE** whose telephone number is 571-272-7492. The examiner can normally be reached on M-F 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PRIMARY EXAMINER
REXFORD BARNIE
08/12/05


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PRIMARY EXAMINER